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|---------------------------------------|---|--|---|
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| 12 ¹ 13 14 | Attorneys for Designated Party PYRO SPECTACULARS, INC. | | |
| 15 | OF THE STATE OF CALIFORNIA | | |
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| . 17 | IN THE MATTER OF PERCHLORATE CONTAMINATION AT A 160-ACRE | SWRCB/OCC FILE A-1824 | |
| 18 19 | SITE IN THE RIALTO AREA | NOTICE OF ERRATA TO PYRO SPECTACULARS, INC.'S ("PSI") REBUTTAL BRIEF | |
| 20 | | Date: | July 9-12, 2007 July 18-19, 2007 |
| 21 | } | Location: | San Bernardino County |
| 22 23 | | | Auditorium 850 East Foothill Blvd. Rialto, CA |
| 24 | | | Mailo, CA |
| 25 | TO ALL PARTIES, THEIR REPRESENT | TATIVES AND ATTO | RNEYS OF RECORD IN THIS |
| 26 | ACTION: | | |
| 27 | PLEASE TAKE NOTICE that inadvertent typographical errors were discovered in | | |
| 28 | Pyro Spectacular Inc.'s ("PSI") Rebuttal Brief at page 2, lines 1 and 4. At page 2, line 1, it | | |
| RESOLUTION LAW CROUP AC. | SWRCB/OCC FILE A-1824- NOTICE OF ERRATA TO PSI'S REBUTTAL BRIEF | | |
| | | | |

reads, "Acre Property, with than 400 feet of soil between it and the groundwater." It should read, "Acre Property, with more than 400 feet of soil between it and the groundwater." At page 2, line 4, it reads, "The facts do prove PSI liable under Water Code." It should read, "The facts do not prove PSI liable under Water Code." A corrected page 2 to PSI's Rebuttal Brief is attached. **RESOLUTION LAW GROUP, P.C.** DATED: June 12, 2007 Philip C. Hunsucker Brian L. Zagon Erik S. Mroz Attorneys for Designated Party Pyro Spectaculars, Inc. V:\Pyro Spectaculars\SWRCB File A-1824 Master File\Rebuttal Brief\Notice of Errata to PSI Rebuttal Brief.wpd

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21 28 Acre Property, with more than 400 feet of soil between it and the groundwater. Rialto's and the Advocacy Team's arguments leave their case on the surface, but Water Code Section 13304 requires <u>facts</u> that prove a discharge of perchlorate is actually in the groundwater or at a depth that is a threat to groundwater. The <u>facts</u> do not prove PSI liable under Water Code Section 13304.

Even Dr. Stephens does not set forth in his April 12, 2007 declaration that perchlorate from PSI is in the groundwater or is a threat to groundwater. Groundwater is more than 400 feet below ground surface at the 160-Acre Property. (Advocacy Team Submission of March 27, 2007 ("Advocacy Team Submission"), p. 5;2 Declaration of Daniel B. Stephens submitted by Rialto on April 12, 2007 ("Stephens Decl."), p. 13.) As part of a "Final Calculation" that he used in his "Declaration" submitted on April 12, 2007, Dr. Stephens estimated that perchlorate on the surface at the 160-Acre Property would be expected to move toward groundwater at an average rate of 1.25 feet per year (15 inches per year), absent a source of water other than rainfall to mobilize the perchlorate. (Stephens Decl., pp. 14 and 16; Exhibit P 164.) Applying Dr. Stephens' "Final Calculation," it would take 320 years for perchlorate to reach groundwater from ground surface at the 160-Acre Property (400 feet ÷ 1.25 feet/year = 320 years). (Stephens Depo., Vol. 3., May 16, 2007, 766:20-767:4.)³ Any minimal amount of perchlorate remaining on the ground at the 160-Acre Property (or elsewhere in the Rialto-Colton Basin) does not meet the definition of "threaten" in Water Code Section 13304(e) because that section requires a "condition creating a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent. reduce, or mitigate damages to persons, property, or natural resources." No evidence exists that perchlorate from PSI's operations is within a hundred feet of groundwater. (Holub Depo...

²According to the Advocacy Team Submission: "In dry weather years, the unsaturated zone in the vicinity of the Property extends to a depth of over 450 feet below the ground surface (bgs)." (Advocacy Team Submission, p. 5.) According to the Stephens Declaration: "The approximate historical thickness of the vadose zone was estimated to have ranged . . . to as much as about 465 feet bgs during the drought years (e.g., 1999 through 2004) . . ." (Stephens Decl., p. 13.)

³USGS studies of the Rialto-Colton Basin result in a vadose zone transport speed of .15 inches per year, far slower than Dr. Stephens' calculation.

PROOF OF SERVICE 1 (SWRCB/OCC File A-1824) 2 3 I am a citizen of the United States. My business address is 3717 Mt. Diablo Blvd., Suite 200, Lafayette, California 94549. I am employed in the county of Contra Costa 4 where this service occurred. I am over the age of 18 years, and not a party to this action. I am readily familiar with this firm's practice for collection and processing correspondence for 5 mailing, facsimile, email, overnight delivery and personal delivery. 6 On June 12, 2007, following ordinary business practice. I served the foregoing documents described as: 7 NOTICE OF ERRATA TO PYRO SPECTACULARS, INC.'S ("PSI") REBUTTAL 8 BRIEF. 9 10 On the following Person(s): 11 (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Lafavette, California. 12 13 X (BY EMAIL) by transmitting via facsimile the document listed above to the fax number(s) set forth above, or as stated on the attached service list, on this date. 15 State Water Board (Original via U.S. Mail) Rialto Karen O'Haire Scott A. Sommer, Esq. 17 Senior Staff Counsel Pillsbury Winthrop Shaw Pittman LLP Water Resources Control Board 50 Fremont Street 1001 | Street, 22nd Floor 18 San Francisco, CA 94105-2228 Sacramento, CA 95814 19 Goodrich: Jeffrey D. Dintzer 20 Advocacy Team Gibson Dunn & Crutcher 333 S. Grand Avenue, 45th Floor Jorge A. Leon, Esq. 21 Office of Enforcement Los Angeles, CA 90071-3191

State Water Resources Control Board 1001 I Street, 16th Floor Sacramento, CA 95812-0100

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24 SARWQCB Gerard J. Tibeault 25 **Executive Director** Santa Ana Regional Water Quality 26 Control Board 3737 Main Street, Ste. 500 27 Riverside, CA 92501 qthibeau@rb8.swrcb.ca.gov

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| 1 | CCAEJ: Penny Newman | | |
| 2 | Executive Director | | |
| 3 | Center for Community Action and Environmental Justice 7701 Mission Blvd. | | |
| 4 | Riverside, CA 92509 penny.n@ccaej.org | | |
| 5 | davin.d@ccaej.org | | |
| 6 | | | |
| 7 | I declare that I am employed in the office of a member of the bar of the State of | | |
| 8 | California. I declare under penalty of perjury under the laws of the State of California that | | |
| 9 | the foregoing is true and correct. | | |
| 10 | Executed on June 12, 2007 at Lafayette, California. | | |
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